Supreme Court, U.S.
FILED
JUL 19 1996
CLERK

No. 95-1911

In The

Supreme Court of the United States

October Term, 1995

RAYMOND VEGA,

Petitioner,

v.

REXENE CORPORATION,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

MARGARET L. VANDERVALK
Associate General Counsel
Rexene Corporation
5005 LBJ Freeway, Suite 500
Dallas, Texas 75244
(214) 450-9066

Attorney for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. Whether Petitioner Raymond Vega, the Plaintiff, may maintain a wrongful termination suit for post-petition, post-plan, pre-confirmation conduct by a Chapter 11 Defendant.

2. Whether Petitioner Raymond Vega may maintain a suit for reinstatement for a wrongful termination committed by a post-petition, post-plan, pre-confirmation Chapter 11 employer.

3. Whether this case meets the criteria of Rule 10 of the Rules of the Supreme Court of the United States for review.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

JURISDICTION 1

STATEMENT OF THE CASE 1

STATEMENT OF FACTS 2

SUMMARY OF ARGUMENT 4

ARGUMENT 5

CONCLUSION 18

TABLE OF AUTHORITIES

Page

CASES

Colonial Refrigerated Transportation, Inc. v. Mitchell, 403 F.2d 541 (5th Cir. 1968) 10

Duryee v. Erie R.R. Co., 175 F.2d 58 (6th Cir.), cert. denied, 338 U.S. 861 (1949) 6

Gilley v. Protective Life Ins. Co., 17 F.3d 775 (5th Cir. 1994) 10

Haubold v. Intermedics, Inc., 11 F.3d 1333 (5th Cir. 1994) 10

In re Barbour, 77 B.R. 530 (Bankr. E.D. N.C. 1987) 6

In re Benjamin Coal Co., 978 F.2d 823 (3d Cir. 1992) 7

In re Braun, 141 B.R. 133 (Bankr. N.D. Ohio 1992), with further proceedings at 141 B.R. 144 (Bankr. N.D. Ohio 1992) and at 152 B.R. 466 (N.D. Ohio 1993) 9

In re Chateaugay Corp., 944 F.2d 997 (2nd Cir. 1991) 15, 17

In re Kiker, 98 B.R. 103 (Bankr. N.D. Ga. 1988) 6

In re MacDonald, 128 B.R. 161 (Bankr. W.D. Tex. 1991) 7

In re Penn Central Transp. Co., 771 F.2d 762 (3d Cir. 1985), cert. denied, 474 U.S. 1033 (1985) 6

In re Szostek, 886 F.2d 1405 (3d Cir. 1989) 8

In re Transouth Truck Equipment, Inc., 87 B.R. 937 (Bankr. E.D. Tenn. 1988) 13

TABLE OF AUTHORITIES – Continued

Page

Matter of 1880 Superfine Lane, Inc., 122 B.R. 665 (Bankr. D. Del. 1990) 8

New York v. N.Y., N.H. & H. R. Co., 344 U.S. 293 (1953) 12

Mullane v. Central Hanover Bank, 339 U.S. 306 (1950) 11, 12

Ohio v. Kovacs, 469 U.S. 274 (1985) 17

Quenzer v. United States (In re: Quenzer), 19 F.3d 163 (5th Cir. 1993) 10

Sequa Corp. v. Christopher, 28 F.3d 512 (5th Cir. 1994) 8

AUTHORITIES

11 U.S.C. §101(5) 16, 17

11 U.S.C. §501 7

11 U.S.C. §502 7

11 U.S.C. §503 ..... 5, 8

11 U.S.C. §503(a) 11

11 U.S.C. §507 8

11 U.S.C. §507(a)(1) 11

11 U.S.C. §524 ..... 4, 5, 7, 8, 9

11 U.S.C. §524(a) 8

11 U.S.C. §1129(a)(9)(A) 8

11 U.S.C. §1141 ..... 4, 5, 7, 8

TABLE OF AUTHORITIES – Continued

Page

28 U.S.C. §1254(1) 1

H.R. Rep. No. 595, 95th Cong., 1st Sess. 309, reprinted in 1978 U.S. Code Cong. & Admin. News 5963, 6266 17

Rule 10 of the Rules of the Supreme Court of the United States..... 5, 18, 19

RESPONDENT'S BRIEF IN OPPOSITION

TO THE UNITED STATES SUPREME COURT:

REXENE CORPORATION, ("Rexene"), files this Brief in Opposition to the Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit ("Response"), asking this Court to deny the Petition for Writ of Certiorari ("Petition") to review the opinion issued on June 20, 1995 by the U.S. Court of Appeals for the Fifth Circuit. In support of this request, Rexene respectfully shows the Court as follows:

JURISDICTION

The Court's jurisdiction of this appeal is based on the judgment and opinion of the Fifth Circuit Court of Appeals entered on June 20, 1995. This Court has jurisdiction to review the judgment of the Fifth Circuit under 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

Refer to Statement of the Case filed by Petitioner for the nature of the case, the course of proceedings, the disposition in the U.S. District Court and the filing of an appeal to the United States Court of Appeals for the Fifth Circuit.

Additionally, Respondent would note that the U.S. Court of Appeals for the Fifth Circuit affirmed the District Court judgment on June 20, 1995.

STATEMENT OF FACTS

Petitioner Raymond Vega ("Petitioner" or "Vega") was initially employed by a predecessor of Rexene on May 14, 1974. In October of 1990, Petitioner injured his back at work. As a result of that injury, he left work in November 1990 and did not return until May 13, 1991. On July 22, 1991, Vega again left work because of his back problems and almost a year later when he was terminated he still had not returned to work. Vega was terminated on June 10, 1992 after his doctors advised he would not be able to lift more than 20 pounds in the future, a restriction that would not allow him to perform his job duties as a mechanic in a petrochemical plant. Vega sought total and permanent disability workmen's compensation based on his back injuries (App. Sec. III, 75).[1]

Old Rexene Corporation, Rexene Products Company and Poly-Pac, Inc. filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code (the "Code") on October 18, 1991 in the Bankruptcy Court for the United States District of Delaware (the "Bankruptcy Court"). The cases were consolidated for administrative purposes only.

---

[1] References herein to an Appendix refer to the Appendix filed with the United States Court of Appeals for the Fifth Circuit.

When the bankruptcy proceedings were filed in October 1991, Rexene scheduled all of its then employees as creditors. Consequently, Petitioner was scheduled as a creditor and received the notices and mailings sent to Rexene's creditors during the course of the bankruptcy proceedings (App. Sec. III, 48-49).

On July 7, 1992, the Bankruptcy Court entered its Order Confirming First Amended Plan of Reorganization (the "Confirmation Order") in Rexene's bankruptcy proceedings (App. Sec. III, 23-44). Among other things, the Confirmation Order set September 8, 1992 as the deadline for the filing of administrative claims against Rexene (App. Sec. III, 35-36).

On July 30, 1992, Rexene caused to be mailed a Notice of Final Date for Filing Administrative Claims Against the Debtors Other Than With Respect to (I) Obligations to Creditors or Vendors Incurred in the Ordinary Course of Business, (II) Obligations to Employees for Compensation or Benefits, (III) Claims for Product Under Exchange Agreements, (IV) Claims for Credits by Customers in the Ordinary Course and (V) Services Rendered by Professionals Retained by the Debtors or the Official Committee of Unsecured Creditors (the "Administrative Bar Date Notice") and a Notice of Confirmation of Debtors' First Amended Plan of Reorganization to all scheduled creditors including Petitioner (App. Sec. III, 52-65). The uncontroverted evidence is that Petitioner received the Administrative Bar Date Notice.

Although Petitioner was required to file an Administrative Proof of Claim if he wished to preserve the claims

asserted in his Complaint in the trial court, he failed to do so (App. Sec. III, 50).

On September 11, 1992, pursuant to the Confirmed Plan of Reorganization (the "Plan"), old Rexene Corporation was merged into Rexene Products Company, whereupon Rexene Products Company changed its name to Rexene Corporation.

On September 18, 1992 (the "Effective Date"), the Plan was consummated (App. Sec. III, 45), and, pursuant to Section 13.02 of the Plan, paragraph 8 of the Confirmation Order, and 11 U.S.C. §524 and §1141, Rexene was granted a discharge.

SUMMARY OF ARGUMENT

Petitioner was scheduled as a creditor during Rexene's Chapter 11 bankruptcy proceedings, was given actual notice of the administrative claims bar date, and failed to file a proof of claim. The notice given Petitioner meets all the requirements of due process. Thus, his post-petition but pre-confirmation Title VII claim, if any, was discharged as part of the bankruptcy proceedings and this action enjoined. Consequently, the District Court entered summary judgment for Rexene which was properly affirmed by the Fifth Circuit.

Petitioner's argument that his claim for reinstatement is an equitable one that was not discharged is also without foundation. As even Petitioner's Complaint attests, his reinstatement claim could be satisfied by money damages. Thus it is a discharged, barred claim.

Petitioner was given actual notice of the administrative bar date and thus was afforded the possibility of a complete remedy for his claims of employment discrimination. The fact that Petitioner is now precluded from asserting his claims is not the result of emasculation of the relief provisions of Title VII but rather the result of Petitioner's own inaction and failure to advance his claims in a timely manner.

Moreover, nothing about this case fits within the criteria of Rule 10 of the Supreme Court Rules for the granting of petition for writ of certiorari, nor does Petitioner even allege that it does.

ARGUMENT

A. PETITIONER'S ADMINISTRATIVE CLAIM WAS DISCHARGED AND HIS ACTION ENJOINED

Consistent with the objective of giving a reorganized entity a fresh start, the Code provides a Chapter 11 debtor with a discharge of all pre-confirmation liabilities. Section 503 of the Code requires a party whose claim arises during the pendency of the bankruptcy and pre-confirmation to file a claim or request for payment of the expenses in the Bankruptcy Court. Pursuant to Section 1141 of the Code, a confirmed plan of reorganization is binding upon a debtor and all of its creditors. Section 524 of the Code provides that the bankruptcy discharge operates as an injunction against the commencement or continuation of an action, the employment of process, or an act to collect, recover or offset any debt that has been

discharged. "The discharge and the discharge injunction are the most important components of a debtor's fresh start." *In re Barbour*, 77 B.R. 530, 531 (Bankr. E.D. N.C. 1987). See also *In re Kiker*, 98 B.R. 103, 109 (Bankr. N.D. Ga. 1988). Rexene as a Chapter 11 debtor whose Plan has been confirmed is entitled to that fresh start.

In his Complaint, Petitioner attempted to allege a cause of action for racial discrimination arising out of the termination of his employment by Rexene. If Petitioner had a claim, which Rexene has consistently denied, it arose June 10, 1992 when his employment was terminated or approximately a month prior to entry of Rexene's Confirmation Order. If he wished to preserve his claim, it was incumbent upon Vega to timely file an administrative expense proof of claim. Despite having received notice of this requirement, Vega failed to file such a claim. Thus, Vega's claim is a discharged administrative, pre-confirmation claim.

It is well established that all claims including administrative ones that have been brought, or could have been brought into the bankruptcy process, are discharged upon the confirmation of a reorganization:

> [T]he provisions for reorganization could not be realized if the discharge of debtors were not complete and absolute . . . if courts should relax the provisions of the law and facilitate the assertion of old claims against discharged and reorganized debtors, the policy of the law would be defeated . . .

In re Penn Central Transp. Co., 771 F.2d 762, 767 (3d Cir. 1985), *cert. denied*, 474 U.S. 1033 (1985) quoting *Duryee v.*

Erie R.R. Co., 175 F.2d 58, 63 (6th Cir.), *cert. denied*, 338 U.S. 861 (1949).

The Third Circuit in whose jurisdiction Rexene's bankruptcy proceedings took place reiterated this position in *In re Benjamin Coal Co.*, 978 F.2d 823 (3d Cir. 1992), where the Court found it to be "unambiguous" that confirmation of a Chapter 11 plan causes "the discharge of all existing claims, including administrative claims." *Id.* at 827.

The Confirmation Order follows the law and provides:

> 4. Upon the Effective Date, except as otherwise provided in the Plan, each Debtor shall be discharged from any and all debts that arose against it before the date of entry of this Confirmation Order to the fullest extent provided by Sections 524 and 1141 of the Bankruptcy Code whether or not a proof of claim for such debt was filed or deemed filed under Section 501 of the Bankruptcy Code, whether or not such debt is allowed pursuant to Section 502 and whether or not the holder of such claim has accepted the Plan, and whether or not such debt is known, unknown, fixed, contingent, matured, unmatured, liquidated or unliquidated.

(App. Sec. III, 89-90).

Case law makes it obvious that Vega's post-petition tort claim is properly classified as an administrative claim. See *In re MacDonald*, 128 B.R. 161, 164 (Bankr. W.D. Tex. 1991). Had Vega timely filed an administrative claim, his claim would have been preserved and he would have

been entitled to whatever damages, if any, he could prove.

> The simple fact is that parties who deal with a bankrupt post-petition are frequently entitled to priority under §503 and 507 of the Code, giving them an added level of protection as compared to the pre-petition claimants. Additionally, the plan of reorganization cannot be confirmed under §1129(a)(9)(A) unless the plan provides for the payment in cash and in full of persons holding "claims" for administrative expenses under §503 and 507. Thus, persons holding claims against the debtor that arise post-petition are in some respects better able to protect their interests than are pre-petition claimants.

Sequa Corp. v. Christopher, 28 F.3d 512, 515-16 (5th Cir. 1994). Vega had "enhanced rights under the Code" *id.* at 519, but chose not to act to preserve them.

Rexene's Plan which became effective September 8, 1991 is binding upon all creditors including Petitioner pursuant to Section 1141 of the Bankruptcy Code. *In re Szostek*, 886 F.2d 1405 (3d Cir. 1989); *Matter of 1880 Superfine Lane, Inc.*, 122 B.R. 665, 668 (Bankr. D. Del. 1990).

In order to secure Rexene's fresh start after bankruptcy the permanent injunction of Section 524 of the Code must be upheld. The U.S. Bankruptcy Court for the Northern District of Ohio, Western District explained the provisions of §524 thusly:

> In essence, Section 524(a) declares that any judgment rendered on a discharged debt in any forum other than the bankruptcy court is null and void as it affects the personal liability of the debtor. Second and perhaps more importantly,

> it contains an injunction prohibiting creditors holding discharged debts from (1) commencing an action on such debt . . .

In re Braun, 141 B.R. 133, 139 (Bankr. N.D. Ohio 1992), with further proceedings at 141 B.R. 144 (Bankr. N.D. Ohio 1992) and at 152 B.R. 466 (N. D. Ohio 1993).

Rexene's Confirmation Order follows the provisions of §524 and states:

> 5. Upon the Effective Date, (i) any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of any of the Debtors with respect to any debt discharged by this Confirmation Order, shall hereby be made null and void and (ii) the commencement or continuation of any action, the employment of process, or any act, to collect, recover or offset any debt discharged by this Confirmation Order as a personal liability of the Debtors, shall hereby be forever enjoined.
>
> (App. Sec. III, 31)

Thus, the Fifth Circuit properly affirmed the grant of summary judgment to Rexene as Petitioner's pursuit of his action was permanently enjoined and any judgment rendered would have been a nullity.

B. THE ADMINISTRATIVE BAR DATE NOTICE MEETS THE REQUIREMENTS OF DUE PROCESS

Petitioner, in his brief to the Fifth Circuit for the first time raised due process questions concerning the sufficiency of the Administrative Bar Date Notice including allegations that the notice:

- fails to itemize the multitudes of types of claims; i.e., tort, etc. that need to be filed;

- was ambiguous; and

- fails to advise of the "right" to late file a claim for cause.

None of these arguments were made in the District Court. Thus they were deemed waived by the Fifth Circuit and should not be considered by this Court either. As the Fifth Circuit explained in *Colonial Refrigerated Transportation, Inc. v. Mitchell,* 403 F.2d 541, 552 (5th Cir. 1968):

> The purpose [of Rule 46] is to inform the trial judge of possible errors so that he may have an opportunity to reconsider his ruling and make any changes deemed advisable. It is therefore the general rule that points not raised and preserved below will not be considered on appeal.

See, also, Gilley v. Protective Life Ins. Co., 17 F.3d 775, 781 n. 13 (5th Cir. 1994) ("We have held that an argument is waived if the party fails to make the argument in response to summary judgment."); *Haubold v. Intermedics, Inc.,* 11 F.3d 1333, 1336 (5th Cir. 1994) (noting that an issue not raised in the summary judgment motion below is not ripe for appellate review); *Quenzer v. United States*

(In re: Quenzer), 19 F.3d 163, 165 (5th Cir. 1993) ("Typically, we will not consider on appeal matters not presented to the trial court."). Vega's claim was properly dismissed due to his failure to assert an administrative claim within the prescribed time period, and the district court correctly granted summary judgment for Rexene on this point.

If Petitioner's arguments are considered, it is also clear that the cases cited for the proposition that Rexene's Administrative Bar Date Notice fails to meet the requirements of due process do not support that contention. Rather, Rexene's Administrative Bar Date Notice clearly meets the due process standards set forth in *Mullane v. Central Hanover Bank*, 339 U.S. 306 (1950) and cited by Petitioner. The Administrative Bar Date Notice clearly advises:

> . . . that September 8, 1992 (the "Bar Date") is the last day for any creditor, other than those creditors described in the last paragraph hereof, to assert any and all claims that such creditor wishes to assert against the above-referenced debtors arising out of or relating to the debtor's post-petition (i.e., on or after October 18, 1991) operations and activities that are entitled to administrative priority pursuant to Section 503(a) and 507(a)(1) of the Bankruptcy Code ("Administrative Claims"), by filing a proof of claim against the pertinent debtor(s). All entities which wish to assert an administrative claim and who fail to do so by the bar date shall be forever barred from asserting such administrative

> claim against any of the debtors or any of their respective successors or assigns.
>
> (App. Sec. III, 52)

The Administrative Bar Date Notice then goes on to specify the form to be used and the address the claim must be sent to. Such notice clearly afforded Rexene's creditors, including Vega, notice of the pendency of the action and an opportunity to present their claims as required by *Mullane*.

The dispositions cited by Vega from both *Mullane* and *New York v. N.Y., N.H. & H. R. Co.*, 344 U.S. 293 (1953) are irrelevant to this action. In both *Mullane* and *New York*, the debtors attempted to rely on notice by publication to block claims of creditors whose identities were reasonably ascertainable to the debtors and who should have been provided personal notice. In this case, Rexene scheduled all of its then employees as potential creditors at the time the bankruptcy petition was filed. Throughout the bankruptcy proceedings each scheduled creditor and potential creditor, including Petitioner, received a variety of notices including the Administrative Bar Date Notice.[2] Thus, the cited cases which deal with the adequacy of

---

[2] Without support Petitioner on pages 9 and 10 of his Brief contends Petitioner was not given actual notice of the bankruptcy or of the confirmation hearing. As a scheduled potential creditor, Petitioner received all notices sent to scheduled creditors including notice of the bankruptcy and confirmation order. The mailing matrixes confirming such mailings were not introduced into evidence as only the notice of the administrative bar date was relevant. Petitioner never raised such a contention in the District Court and put no evidence in the record to support that contention.

notice by publication to ascertainable creditors are irrelevant to this case where actual notice was provided.

Petitioner also attempts to contend that Rexene's Administrative Bar Date Notice is ambiguous, apparently because it does not specifically list all of the various causes of action that might be considered claims subject to its purview. There is no such notice requirement and to require such notice, given the thousands of types of potential causes of action in today's modern world, would make bar date notices incredibly cumbersome and subject the debtors to endless litigation over whether a potential type of claim was properly described.

Petitioner further argues that the Administrative Bar Date Notice is somehow ambiguous with respect to this specific claim in that it exempts employees from filing claims for wages, salary, expense reimbursements, commissions, benefits and other forms of compensation. Vega, however, was no longer an employee when he received the Administrative Bar Date Notice having been terminated on June 10, 1992. Thus, that exemption is not applicable.

Although Vega's Petition for Writ implies that he was confused by the language in the notice, there is no evidence in the record supporting such an inference. Moreover, had he been confused, common sense requires that he should have done something if there was any question as to what he might be required to do. As the Bankruptcy Court noted in *In re Transouth Truck Equipment, Inc.*, 87 B.R. 937, 942 (Bankr. E.D. Tenn. 1988):

> If a holder of a claim receives a notice to file a proof of claim, it is reasonable to conclude that

> the notice was sent for a reason. Furthermore, there is usually nothing to be gained and everything to be lost by not filing a proof of claim. Thus, the claimant who receives a notice to file a proof of claim should follow common sense rule number one: "Do not ignore any order setting a deadline to file claims unless you know without a doubt that the order does not apply to your claim."
>
> The terminology of the order should not be a major source of debate. If the terminology raises a question and the order is sent to the creditor's lawyer for review, the lawyer will most likely follow the common sense rule. When in doubt and there is nothing to be lost by doing so, file a proof of claim before the deadline.

Had Petitioner followed this common sense directive, his claim would have been preserved.

Petitioner's argument that the Administrative Bar Date Notice violates the due process clause because it fails to give notice that a late filed proof of claim may be permitted by the bankruptcy court for cause is also without merit. Petitioner cites no authority for the proposition that a notice should so advise, because there is no such authority. In fact, to require such notice would be counterproductive and undermine the entire purpose of a bar date notice which is to warn claimants that their claims will be cut off if they do not act to preserve them.

Moreover, had Vega or his counsel wished to late file a proof of claim, they have had ample chance but have made no attempt to do so. In addition to actual notice of the administrative bar date that was sent to Vega on July 30, 1992, the record demonstrates that after he filed his

complaint with the EEOC, Rexene immediately advised the EEOC of its bankruptcy defense and supplied extensive documentation thereof to the EEOC (App. Sec. III, 74-105). The EEOC then informed Petitioner of Rexene's bankruptcy defense (App. Sec. III, 50).

Moreover, after service of Petitioner's Complaint on June 15, 1994, Rexene advised Vega's counsel that Petitioner's claims were discharged and barred by the Confirmation Order, and requested that the lawsuit be dismissed (App. Sec. III, 106-136). When counsel refused to dismiss the suit, Rexene filed its motion to dismiss once again asserting its bankruptcy defense. At no time up to the present has Vega ever attempted to file a proof of claim in the bankruptcy court. Vega had more than two years to file such a late claim before the District Court Judgment was entered herein and failed to do so.

C. PETITIONER'S CLAIM FOR EQUITABLE RELIEF – REINSTATEMENT – CAN BE SATISFIED BY MONETARY DAMAGES AND THUS IS A DISCHARGEABLE CLAIM

Petitioner's argument that the reinstatement portion of his Title VII claim is not dischargeable because it is a claim for equitable relief misconstrues both the Code and *In re Chateaugay Corp.*, 944 F.2d 997 (2nd Cir. 1991). Whether Plaintiff's claim for reinstatement is a dischargeable one must be analyzed pursuant to the Code. First, Petitioner's argument that since reinstatement would impact only future revenues that this is a post-confirmation matter is pure nonsense. Any claim Petitioner had including one for reinstatement arose June 10, 1992 when

he was terminated – or approximately a month prior to entry of the Confirmation Order. Thus, it is clearly a pre-confirmation claim. The fact that the remedy wouldn't be imposed until after confirmation is irrelevant to characterization of the type of claim. If Petitioner's argument was given dignity, the bankruptcy discharge and injunction would be gutted as every barred creditor would claim that since the remedy would not be awarded prior to confirmation that there was no harm done. It is the date a claimed right accrued, not when the remedy is awarded, that controls characterization of a claim as pre- or post-confirmation.

In reviewing Vega's argument it is possible that he is also alleging that his reinstatement claim is an equitable one and therefore not barred.[3] In this regard, a review of the definition of a "claim" is useful.

Section 101(5) of the Code defines a claim as:

> (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or
>
> (B) right to an equitable remedy for breach of performance if such breach gives rise to a right of payment, whether or not such right to an equitable remedy is reduced to

---

[3] It should be noted that Vega premised his arguments at summary judgment on his reinstatement claim, he implicitly admitted that any claims for monetary damages have been discharged and are barred by Rexene's Confirmation Order. Thus, Vega, as the District Court correctly noted, limited the relief sought to reinstatement.

> judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

The legislative history of the Code reflects Congress' intent that the term "claim" be given broad interpretation so that "all legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with in the bankruptcy case." H.R. Rep. No. 595, 95th Cong., 1st Sess. 309, *reprinted in* 1978 U.S. Code Cong. & Admin. News 5963, 6266. The courts accordingly have given a broad and expansive reading to the term "claim." *See Ohio v. Kovacs*, 469 U.S. 274, 279 (1985). Using the Code definition, clearly Petitioner's cause of action was a claim and was discharged by the bankruptcy.

Because Vega's proposed remedy of reinstatement is pled in Paragraphs XXIV and XIX of Plaintiff's Original Complaint (App. Sec. II, 6-7) in the alternative with a claim for front pay; i.e., monetary damages, it clearly is not the type of non-dischargeable injunctive claim contemplated by *Chateaugay*. In examining what types of equitable or injunctive claims are dischargeable, the *Chateaugay* Court reviewed the Code's definition of a claim and noted that the drafters of the Code cited a claim for the equitable remedy of specific performance concerning the sale of land as a clearly dischargeable equitable remedy because it may alternatively be remedied by monetary damages. Similarly, Vega's claim, if any, for the equitable remedy of reinstatement can alternatively be satisfied by money damages. Thus, pursuant to Section 101(5) of the Code and *Chateaugay*, it is a claim and was discharged pursuant to the Confirmation Order upon Rexene's emergence from bankruptcy.

D. PETITIONER'S CASE DOES NOT MEET THE CRITERIA OF SUPREME COURT RULE 10

Supreme Court Rule 10 provides that "A petition for a writ of certiorari will be granted only when there are special important reasons therefor." Petitioner has not cited any special or important reasons why his petition should be granted because there are none. Similarly, Petitioner failed to act to preserve his claim, if any, when he was given the chance to file an administrative proof of claim, and now is asking this court for relief. Such a claim is not of the type that should be brought to or considered by this court.

Although not a controlling list of the reasons for granting certiorari, Rule 10 lists three characteristics of cases that will be considered. Petitioner's case meets none of those criteria. That it fails to meet those criteria is evidenced by Plaintiff's brief in which there is no claim that any of the criteria are met. Rather, we have a Plaintiff's claim that is so deficient that a motion to dismiss was converted to a motion for summary judgment and granted without further proceedings in the U.S. District Court and that summary judgment was summarily affirmed by the U.S. Court of Appeals for the Fifth Circuit.

CONCLUSION

None of the issues Petitioner presents is of precedential value that warrants review by this Court. Indeed, a number of the issues raised are not subject to review as they were not presented to the trial court. Petitioner

makes no claim that this case meets the criteria of Supreme Court Rule 10 for acceptance by this Court for the clear reason that it does not. The Fifth Circuit meticulously reviewed the facts and applied the correct legal standards in reaching its conclusions. For the reasons set forth herein, this Court should deny Petitioner's Petition for Writ of Certiorari.

Respectfully submitted,

MARGARET L. VANDERVALK
Associate General Counsel
Rexene Corporation
5005 LBJ Freeway, Suite 500
Dallas, Texas 75244
(214) 450-9066

Attorney for Respondent